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ABSTRACT

The principles of Affirmative Action policies and their implementation in American businesses and universities are examined in this paper. Issues such as discriminatory hiring practices, promotions and salaries, as well as the awarding of athletic scholarships, are discussed. Examples of relevant court cases are presented. Court decisions are regarded as having been inadequate in most cases. The procedures of recruitment and hiring of the Affirmative Action Officer for a given organization, and the compensation offered, are said to be insufficient for the job of directing complicated Affirmative Action programs. Institutions and labor unions are branded as resistant to Affirmative Action. Some of the reasons for this resistance are noted: particularly, the accusatory fashion in which Affirmative Action regulations are often initiated; practical complications, such as time, money and bureaucratic paperwork; and, in educational institutions, the perception of Affirmative Action as a threat to academic freedom. Some recommendations are made as to Affirmative Action program design and counseling. In the meantime, however, Affirmative Action is labeled a "charade" and relegated to a list of social "dreams," among them integration, full employment, and the eradication of drug addiction. (Author/GC)

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THE MYTH OF AFFIRMATIVE ACTION

- W. J. Roye

Sociological Abstracts, August, 1976 - S06026

The legal and social intent of all the laws and regulations impacting directly upon affirmative action are both simple and clear, and compatible with constitutional concepts in our democratic society. The various titles may be summarized as establishing laws, regulations and procedures to guarantee that no person shall, on the basis of race, age, religion, sex or origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under programs or activity receiving federal financial assistance, or which employ fifteen or more people and operate in the private sector of the economy or national life. The proliferation of titles and regulations, and the cryptic language of bureaucracy, may obscure, but cannot obliterate the fact that the affirmative action concept and the programs are mere extensions of a basic Constitutional principle. All affirmative action procedures have, or should have, one basic objective--to further equal opportunity for significant segments of our general population. All the mysterious Titles resemble one another, both in principle and in objective.

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When consideted in their specific bureaucratic context, as monitored by the responsible official agencies, or as enforced, the various titles also resemble one another in that they require the same basic function on the part of institutions, agencies, industries, and any kind of private sector organization. Certain tasks are required, tasks which are themselves in congruence with often stated American

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political and social philosophies related to Justice, Equality, and to an American dream called efficient management. Universities are clearly required to comply with regulations. A university which evades compliance should be heavily penalized because such institutions have excellent means and resources to implement Affirmative Action programs.

1. Notification (proclamation) of a policy of nondiscrimination on the basis of race, religion, age, sex, origin, and incompliance with appropriate law (title) or regulation.

2. The assignment and identification of a person in each complying organization who is responsible for coordinating compliance efforts. Each institution, agency, corporation, or what have you, should have an Affirmative Action Officer--whatever his/her local and organizational title may be.

3. A plan, complete with appropriate procedures to develop, implement, and coordinate, activities aimed at helping the organization comply with the law or regulation which applies in the interest of the person or group which is the victim of a departure from a basic constitutional principle, and report periodically on the status of this effort.

If we say then that there is something basic and Constitutional about Affirmative Action and something generic about any affirmative action program, what is the problem? Why may we suspect that the entire affirmative action story has suspicion of being a myth, if it is clearly laid out in principle. Everyone has equal access to employment, training, promotion, equal pay for the same work. Regulations deal directly and attention is with many details by insisting that employers provide comparable facilities, and amenities for both sexes, and all categories of employees. Federal assistance may be curtailed or contracts broken if such things are not done.

We must worry because there is some question as to whether affirmative action is benefiting those it should benefit the most.

A few statistics from "respectable sources" may hint at why we should be concerned and be inclined to think there is a myth rampant on the scene. Here is a summary from the U.S. Bureau of the Census which seems to say that income is adversely effected if you are not a White male--no matter what laws related to affirmative action say. Education and training is supposed to reflect in personal income, in a society where the principle of affirmative action prevails and is a commitment on the national and local levels of government and industry. Odd. White males make and will continue to make at least twice as much as (median income) Black women with the same education. White male income is also at least twice as much as White women with the same education. The same group continues to make at least forty percent more than Black men with equivalent education. This pattern preceded our national "deter-

Education and Income by Race and Sex

Income	Elementary school	High school			College			Total
	Total elementary	1-3 years	4 years	Total high school	1-3 years	4 or more years	Total college	
Men, white								
$1-$999 or loss	3.2%	2.0%	1.5%	1.6%	1.4%	1.4%	1.3%	1.8%
$1,000-$4,999	40.9%	19.1%	10.7%	13.2%	10.3%	7.7%	8.7%	17.4%
$5,000-$9,999	32.6%	33.4%	27.4%	29.2%	21.5%	15.8%	18.3%	26.4%
$10,000-$14,999	16.0%	29.1%	34.8%	33.1%	32.9%	23.8%	27.7%	27.8%
$15,000-$24,999	6.3%	14.0%	21.7%	19.4%	25.9%	33.2%	30.1%	20.1%
$25,000 and over	1.1%	2.4%	4.1%	3.6%	7.9%	18.1%	13.8%	6.3%
Median income	**$5,715**	**$9,379**	**$11,507**	**$10,910**	**$12,541**	**$15,419**	**$13,901**	**$10,755**
Men, black								
$1-$999 or loss	4.4%	3.5%	2.0%	2.7%	2.1%	0.9%	1.5%	3.2%
$1,000-$4,999	55.5%	28.9%	20.3%	24.0%	19.0%	15.7%	17.7%	35.0%
$5,000-$9,999	30.6%	42.9%	36.8%	39.8%	30.8%	27.7%	29.6%	34.4%
$10,000-$14,999	7.5%	20.4%	31.1%	25.3%	31.7%	30.2%	31.1%	19.9%
$15,000-$24,999	1.9%	4.1%	9.2%	6.9%	16.0%	21.3%	18.2%	6.9%
$25,000 and over	0.2%	0.2%	0.6%	0.4%	0.4%	4.3%	2.0%	0.6%
Median income	**$3,907**	**$6,902**	**$8,779**	**$7,869**	**$9,724**	**$10,954**	**$10,199**	**$5,521**
Women, white								
$1-$999 or loss	13.0%	13.5%	14.4%	14.1%	13.7%	12.6%	13.2%	13.7%
$1,000-$4,999	72.0%	57.5%	43.3%	47.3%	37.7%	25.1%	31.4%	48.5%
$5,000-$9,999	13.1%	24.7%	33.6%	31.0%	33.9%	30.9%	32.5%	27.5%
$10,000-$14,999	1.5%	3.9%	7.1%	6.2%	11.3%	22.0%	16.6%	7.6%
$15,000-$24,999	0.3%	0.7%	1.5%	1.3%	3.1%	8.2%	5.7%	2.2%
$25,000 and over	0.1%	0.2%	0.2%	0.2%	0.4%	1.1%	0.7%	0.3%
Median income	**$2,325**	**$3,189**	**$4,178**	**$3,835**	**$4,839**	**$7,178**	**$5,819**	**$3,553**
Women, black								
$1-$999 or loss	16.8%	10.9%	8.3%	9.5%	7.8%	2.0%	5.2%	11.3%
$1,000-$4,999	75.3%	63.8%	48.1%	55.3%	37.7%	15.0%	27.8%	57.6%
$5,000-$9,999	7.4%	22.1%	36.8%	30.0%	40.3%	45.0%	42.4%	24.6%
$10,000-$14,999	0.3%	2.4%	6.4%	4.6%	11.9%	29.9%	19.7%	5.5%
$15,000-$24,999	0.1%	0.6%	0.5%	0.5%	2.0%	7.8%	4.6%	1.0%
$25,000 and over	0%	0.1%	0%	0.1%	0.3%	0.4%	0.3%	0.1%
Median income	**$1,923**	**$3,268**	**$4,412**	**$3,795**	**$5,463**	**$8,957**	**$6,979**	**$3,203**

Note: Columns may not total 100% due to rounding.

SOURCE: UNITED STATES BUREAU OF THE CENSUS

mination" to bring about affirmative action and may well survive the law. White males will exceed all other groups in every activity except unemployment; there minorities are supreme.

Please view this chart, from an official source, through the many laws and affirmative action regulation which seem to say

> No person shall, on the basis of race, religion, age or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefore, whether full-time or part-time, under any program or activity operated by an employer which receives or benefits from federal financial assistance or contracts.
>
> An employer shall make all employment decisions in any activity operated by such employee in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of.....
>
> An employer shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees to discrimination, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the employer.
>
> An employer shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits only or predominantly members of one group, if the giving of such preferences has the effect of discrimination....

In one way or another, directly or indirectly, each and every affirmtive action regulation speaks specifically to such specific areas of employment policy as

> recruitment, advertising, and the process of application for employment;
>
> hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
>
> rates of pay or any other form of compensation, and changes in compensation;
>
> job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
>
> the terms of any collective bargaining agreement

Until just a few years ago, government involvement in corporate human resource management had not been a major concern to employers. Since passage of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, however, the issue of equal employment opportunity has made government an increasingly active partner. Today, nearly every American business with 15 or more employees is convered by extensive equal employment regulations.

The issue affects more than personnel policy alone. A series of multi-million dollar awards, out-of-court settlements and related agreements setting new patterns for future employment, training and promotion have made EEO considerations a major factor in corporate performance.

Still to be decisively tested in the courts are interpretations of the law that may further and profoundly alter fringe benefit arrangements.

Despite the obvious impact on business costs and organization planning, many corporate policymakers do not fully appreciate the implications of these developments, or the risks they run by oversight. Although the headlines may be made by multi-million dollar judgements against major companies, thousands of smaller companies dependent on government contracts know that government enforcement could fall equally on large and small companies and universities.

Among the laws important in the EEO area are Civil Rights Act of 1866, as amended in 1871 and 1872, all of which are still viable. Some more recent laws include:

- Equal Pay Act of 1963 with its amendments;
- Civil Rights Act of 1964 with its amendments;
- Age Discrimination in Employment Act of 1967;
- Rehabilitation Act of 1973;
- Executive Order 11246 with its amendments, under which the Department of Labor enforces compliance by Federal contractors with equal employment opportunity requirements;
- Vietnam Era Veterans Readjustment Act of 1974 requiring affirmative action in the recruitment and employment of Vietnam era veterans by government contractors and subcontractors.

These laws have been supplemented by many state and local laws and ordinaces, which threaten similar and often even more stringent affirmative action requirements.

Despite all this law and regulation, the thought that we are operating on the basis of a myth persists. And there is much evidence to support such suspicions. As a nation we are obviously not committed to the affirmative action idea. Moreover, we are not truly concerned about the application of the proliferating remedial and preventive regulations. The public, and activists within the public are lulled toward complancy by the reports of huge penalties meted out to delinquent industries. As an example consider a case which appears typical:

The immediacy and urgency exhibited in this typical case demonstrates our national philosophic committment to The Affirmative Action concept. Read this news story of June 13, 1976. (Identies hopefully removed)

HEADLINE: COURT TELLS _____ COMPANY
TO PAY 833 BLACKS IN JOB CASE

June 12 (UPI) -- A Federal District Judge today order the _____ to pay $1-million to 833 former and current black employees because the company had kept them out of higher-paying jobs.

Judge _____'s back-pay order ended 10 years of court action by the employees at the plant. Judge _____ also signed an order that set the distribution of the money.

The employees had asked for $1.6 million. Some will receive $1,200 while others will receive as much as $4,000 from the order, court officials said.

The lawyers in the case, _____ _____ were awarded $220,000 in attorneys' fees. It was believed to be one of the largest attorneys' fees ever awarded in a job discrimination case in the United States.

Company officials were unavailable for comment.

The men filed the suit in 1966 against the company, charging that whites had received promotions over blacks with more seniority. One black employee asserted that when blacks had begun to be hired for jobs that only whites had held, the company cut the pay rate for those jobs.

Those employees who retired since 1966 will receive their share of the money through the pension system. Benefits will go to the widows of those who have died.

The case was originally heard in Federal Court in 1971, five years after the suit was filed. The Judge, in 1972 ruled that the employees had not been discriminated against.

The case was later appealed to the United States Court of Appeals which reversed the Judge's order.

The case was sent back to Federal Court with an order to grant back pay and develop a plan for eliminating job discrimination. The Judge then ordered the company to pay the money.

The Judge last month said a four member committee, with two blacks, would work on the plan until December 31, 1977.

The committee will work on a corrective plan until December 1977. So it means ten years between filing and finding and a maximum individual compensation of $4,000. This is a boondagle for a few widows -- note no widowers -- and a jackpot for the attorneys. Myth? What is a better word?

In recent weeks, several other interesting court opinions have been delivered that will widely affect equal opportunity and affirmative action in the employment of millions of workers. The most important decision, because it is by the Supreme Court of the United States forbids the Federal Government from requiring state and local governmental agencies to be included in the Fair Labor Standards Act. More perplexing, two district courts ruled that white males had been discriminated against by the employment of white females under affirmative action hiring procedures. In one of the above cases, the affirmative action hiring was by court ordered consent decree with the Equal Employment Opportunity Commission; the other was a hiring that took place under a university's adopted affirmative action plan to increase its ratio of women faculty members. (See: AAAA Newsletter. Vol. 2 #4, July 1, 1976, Ball State University.)

Other custodians of the American soul also strain our unshakable trust in the ultimate rule of reason. The National Collegiate Athletic Association has gone to court to try to have intercollegiate athletics excluded from the guidelines the federal government issued last summer for enforcing an anti-sex bias law.

Charging that the Department of Health, Education and Welfare exceeded its authority and the intent of Congress by including athletics in its regulations for enforcing Title IX of the Education Amendments of 1972, the association asked the U.S. District Court for Kansas to invalidate either all the regulations or at least the sections dealing with athletics--and to enjoin HEW from enforcing them.

(Title IX forbids sex discrimination in federally assisted educational programs.)

The association's lawsuit contains many of the contentions that the organization put before Congress last summer in an unsuccessful attempt to convince lawmakers to exclude athletics from the guidelines:

- That athletics do not receive direct federal aid and thus should not be included under the coverage of the law.
- That HEW unlawfully interpreted the law to include programs that "benefit from" federal aid, while the law itself only mentions programs that "receive aid."
- That regulations require athletic scholarships to be distributed with "arbitrary quota standards, without regard to the relative academic and athletic skills of male and females candidates."
- That the standards set out in the regulations for determining whether a particular institution provides equal opportunity are vague and indefinite.

During Congressional hearings last summer, opponents of the N.C.A.A. position argued that "Congress did not intend to initiate a federal policy of giving federal assistance to an institution which discriminates in some areas although not in others," in the words of Bernice Sandler, Director of the Project on the Status and Education of Women at the Association of American Colleges.

In addition to the legal issues, the athletic association's suit says that the Title IX regulations require N.C.A.A. members to engage in time-consuming programs of self-evaluation. Appropriately, one should not examine one's own behavior when money or the teams are involved.

"Most importantly," said the association, the regulations "involve the loss of freedom of individual institutions to determine the education or education-related programs most suited to (each) institution, free from interference or regulation by the federal government."

If Athletic scholarships must be distributed in proportion to the number of students of each sex participating in intercollegiate sports, " a sex-based quaota system for the awarding of athletic scholarships, in violation of the basic prohibition of Title IX against classifications based upon sex," will result, the association charged. "It amounts, moreoever, to a thinly disguised program to require affirmative corrective action by educational institutions, a program which is neither warranted by the facts nor authorized by Title IX," the association said. (See: The Chronicle of Higher Education. March 1, 1976, Vol. XII, Number 1.)

At universities in general, including those which the association so jaundicedly guards from excessive female participation, compensation, defined as salary plus fringe benefits, for female faculty members fell farther behind that of male faculty members during the past year, according to the data. Little is made of this.

In 1974-75 women's compensation averaged 4.5 per cent less than men's in the same faculty ranks. In 1975-76, the gap in compensation for men and women in the same ranks increased to 5.2 per cent.

SHARE OF JOBS DECLINE

The percentage of faculty members who are women fell from 22.5 per

cent in 1974-75 to 21.7 per cent in 1975-76, the A.A.U.P. report says.

The female minority on the faculties of both private and public institutions dropped by about one percentage point, while at church-related institution, women's share of total faculty jobs remained about the same as last year. (See: American Association of University Professors. 1976 Faculty Salary Survey. See the Chronicle of Heshen Education, June 28, 1976)

The shadow of the myth also envelopes another phenomenan of the Affirmative Action nonmovement; The Affirmative Action Officer. Every institution and business seems to want one--they widely proclaim they do, and compete fiercely to not get a good one, or to reduce the effectiveness of those potentially capable of bringing about compliance. Compliance is that nirvanic state in which an organization is consciously, definitely and obviously making a maximum effort to bring about equal opportunity in its area of activity and jurisdiction.

To begin to lay bare the level of committment from this angle, look at the recruitment of Affirmative Action Officers by universities and corporations. This a fruitful perspective through which to guage the sincerity of an affirmative action program and thrust. We may begin by looking at an actual and typical "Announcement of Position Vacancy" for such a job. Such announcements are not hard to find, if one remembers they are most often placed in advertisements in places where specialists in the field will not find them in time to respond, or at all. Note the clarity and precision with which the employees mission is stated. Note the power and/or influence placed at the disposal of the Affirmative Action Officer.

ANNOUNCEMENT OF POSITION AVAILABILITY

POSITION: Affirmative Action Officer

RESPONSIBILITIES: Maintain and further develop an ongoing Affirmative Action Plan to insure non-discrimination in education, extra-curricular activities and employment on the basis of race, color, religion, national origin, age, sex or physical handicap. Promote, with the support of the Affirmative Action Council and the Human Relations Planning Committee, a program of student life activities and services devoid of discriminatory practices. Within the context of the institution's Desegration Plan, support those activities specifically designed to develop a broader awareness of the minority student's comprehensive needs and to seek an institutional response to meet those needs. Design, implement, and maintain an adult and reporting system which will monitor implementation of all aspects of the institution's Affirmative Action Plan and Human Relations Action Plan and assist in the periodic evaluation of their effectiveness. Prepare, with the support of the Affirmative Action Council and the Human Relations Planning Committee, such documentation as may be required by state and federal agencies to demonstrate institutional progress in the fulfillment of its commitments. Coordinate the activities of the Affirmative Action Council in the disposition of complaints of discrimination.

QUALIFICATIONS: Master's degree, preferable in psychology, sociology or a related field. A baccalaureate or master's degree in another field is acceptable if supported by appropriate administrative experience in higher education or experience with the culturally diversified. The successful candidate must demonstrate an awareness of and experience with the culturally diversified and be an administrator, organizer with demonstrated ability to communicate effectively and work cooperatively with multiple publics.

SALARY AND CLASSIFICATION: $13,418 - $17,663 depending on academic preparation and professional experience. Assigned to the State College or University Manager I classification on a twelve (12) month contract.

EFFECTIVE DATE: Upon the availability of the candidates but no later than June 30, 1976.

APPLICATION PROCESS: Dossiers will be reviewed by the Affirmative Action Search Committee upon receipt of a letter of intent, resume and three (3) letters of recommendation. If current, placement papers or redentials are acceptable. The deadline for filing is ten days. All correspondence is to be directed to the Executive Assistant to the President, (name of organization and address).

Consider Another; one with better pay:

JOB DESCRIPTION: Affirmative Action Officer

SALARY RANGE: $17,00 - $23,000

Brief description of duties: The Affirmative Action Officer is an administrative officer reporting directly to the President. He/She acts to implement policies on Equal Employment Opportunity, coordinates the offices and committees which deal with problems arising in this area and serves as reguired as executive officer to the several bodies responsible for these matters. The Affirmative Action Officer recommends policies and procedures to the President, consults with the President's EEO Advisory Committee and other policy-making bodies on his behalf, interprets legal and administrative requirements and is responsible for the development and communication of procedures and reports programs designed to support Equal Opportunity and Affirmative Action throughout the company, including the five production sites and subsidy company. The AA Officer is also responsible for the design and conduction of staff development seminars and generally assists the corporate director of training in the performance of his duties.

QUALIFICATIONS: Demonstrated commitment to the principles of Affirmative Action and ability to work with people in sensitive, controversial area of concern, to administer programs, to communicate effectively, to interpret and communicate the import of relevant statues and regulations, to use and analyze statistical data is required as well as thorough familarity with Federal reports required.

Master's degree required in such fields as Sociology, Psychology, Law, Educational Administration, Social Work, Economics, etc. Experience in the development and administration of EEO programs in a corporate setting is highly preferable as is experience with industrial personnel and policy requirements.

Send Resume and Three Letters of Reference to:

Director of Personnel, (company name and address)

Note This Question: Who is usually at the bottom of the discriminating personnel practices?

This superperson--expert in diplomacy, law, administration history, sociology, statistics, personnel operation, etc. enjoys a strange and shaky status. The Affirmative Action Officer may be found wanting if for example again, as a trainer he/she has not tutored employment interviewers so that they all pass a (?) simple test such as this one used by a Consultant specializing in Affirmative Action.* An interviewer or staff counselor who cannot correctly respond to most of the questions may well serve as the basis of massive legal defense for the employer. How many of our receptionists, interviewers, counselors, and colleagues may we depend upon to succeeded with this quiz?

EQUAL EMPLOYMENT OPPORTUNITY QUIZ

Lawful Question or Issue	Unlawful Question or Issue	
( )	( )	1. What is your date of birth?
( )	( )	2. I'm sorry, I see you're 29 years old and we wanted a mature teacher over 35.
( )	( )	3. Were you ever a member of the Communist Party?
( )	( )	4. Have you served in the military?
( )	( )	5. Have you ever been arrested?
( )	( )	6. How did you finance your way through school?
( )	( )	7. Are you engaged to be married?
( )	( )	8. Briefly tell me about your teaching experience.
( )	( )	9. How long have you been a resident of the state and city?
( )	( )	10. What was your maiden name?
( )	( )	11. An answer to a challenge by the EEOC that there was no intent to discriminate can assist in a defense.
( )	( )	12. A specification requiring a doctorate degree for promotion to a department head level position is valid.

Lawful Question or Issue	Unlawful Question or Issue	
( )	( )	13. There is a statute of limitations in the case of an aggrieved teacher suing for back wages when a school is found guilty of discrimination.
( )	( )	14. It is an acceptable practice for the school administration to give to an employee an option to early retirement instead of a reduction in grade.
( )	( )	15. Pregnancy must be treated like any other temporary disability under health insurance or sick pay plans.
( )	( )	16. A woman is entitled to her former or like position if she returns within three months of pregnancy leave.
( )	( )	17. As a part of a school's effort to equalize pay for equal work, it raises its female employees in parity with male employees. This good will gesture is sufficient to reduce back pay liability.
( )	( )	18. A school can enter into an agreement with the EEOC to modify its custodial union seniority system without consultation with or agreement of the Union.
( )	( )	19. School administrators must permit employees examination of personnel records.
( )	( )	20. Sorry, we're trying to hire for the eventual head of our English department and I see you don't have a master's degree.

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* Through the cooperation of EEO Action Services - New York City

Those with strong residual faith in the American system would anticipate that there would be one area of our society battling with trojan tenacity for affirmative action--the labor union movement. Unfortumately, it may be that in unionism the myth was first nurtured and is currently most strongly projected. We must remember that unions are most deeply involved in affirmative action programs. This involvement is based upon law, labor contracts, and the proclaimed basic tenants that underlay the way of life we call unionism. Sadly, as a whole, unions are as resistant to the idea as the most discriminating employers, individual bigots, and active sexists.

All local unions with 100 or more members are required to submit identifying and other basic information to the EEOC. Local unions which operate hiring halls or perform a similar referral function also are required to report detailed membership, referral and applicant statistics.

Of 20,000 locals reporting in 1972, 3,480 indicated that they operated a hiring hall or performed a similar referral function. Reports showed that 21 percent of their 2.8 million members were minorities: 11 percent were blacks; 8.3 percent, Spanish-surnamed; 0.6 percent, American Indian; and 1.1 percent, Asian American.

Within the building trades union, which, with 1.6 million members accounted for more than half of the total union membership, 8.3 percent of all members were black; 6.5 percent, Spanish-surnamed; 0.9 percent American Indian; and 0.2 percent, Asian American.

Although minorities represented 21 percent of total referral unions' membership, they were not distributed among the building trades internationals in any reasonable proportion.

This was particularly true of the two major groups--blacks and Spanish-surnamed Americans--which were concentrated in the laborers' international and underrepresented in the better-paying, craft workers' unions.

Even a casual observer will note that not only do unions resist affirmative action, but minority membership is resisted by most unions. The outstanding blacks who hold leadership positions in many key unions only make the problem more perplexing. In fact some of these individuals are instrumental in defending unionism against charges that it is not doing its best to bolster the affirmative action programs. The ideological defense most often indicated is that disadvantage of minorities is less urgent than the struggle between classes, and unions are devoted to furthering the working class. So we have another powerful and influential plexis uncommitted to affirmative action.

(See: 9th Annual Report Equal Employment Opportunity Commission for Fiscal Year Ended June 30, 1974. Report #99, January 7, 1976. Commerce Clearing House, Inc., p. 19)

In all fairness there are some practical reasons why some people resist Affirmative Action. Affirmative Action is no easy road, even for the strongly committed. Many, many, factors converge to make honest implementation difficult, specius, costly, and inconvient, to the employers trying to comply. The disruption an affirmative action programs triggers in an institutionalized organizations is very real. The discomfort it often brings to people who consider themselves as liberal is painful.

Universities rarely develop and honestly follow thorough affirmative action programs. Some battle the idea in the name of academic freedom, exessive costs with minimum results, inapropriate use of space and time. Many resist the entry of federal officials into educational affairs at the non-grant operational level. Governments, foundations--the money sources are supposed to give money to universitities but not direction and orders. Most institutions however do go through the motions and affirmative action enforcers know themselves that no reputable traditional university is going to be totally denied money or general governmental assistance and cooperation because its activities discriminate against any group supposedly to be helped by something so mundane as practical application of protective and remedial laws impacting on affirmative action programs.

There is a point to some resistance. Practical points The Affirmative Action Officers, for example require staff, time, money, expertise, and space, to maintain at least the following forms, lists, rosters,reports, etc.

ORGANIZATIONAL BREAKDOWN

WORKFORCE ANALYSIS

UTILIZATION ANALYSIS BY JOB GROUP

HIRING GOALS

ULTIMATE HIRING GOALS

PROMOTABLE LIST

PROMOTION AND TRANSFER ACTIVITY

TERMINATIONS

SENIORITY ROSTER

APPLICANT FLOW (with detailed information on all applicants)

NEW HIRES

PERSONNEL POLICY AND PROCEDURE

POSITION DESCRIPTIONS FOR ALL JOBS

INTERVIEWER"S WORKSHEET

PERSONNEL ACTION FORM

In addition most Affirmative Action Officers have a few other duties of a traditional nature, related to routine productive efforts of their employer.

In July 1976 eleven college associations asked the Department of Health, Education, and Welfare not to set higher priorities for handling some types of discrimination complaints than others.

The recommendation was made as the associations responded to a request from H.E.W. Secretary David Mathews for suggestions on how the agency might handle its ever-increasing load of complaints of discrimination based on race, national origin and other factors.

Colleges believe each complaint should be docketed as it arrives and dealt with on a first in, first out basis.

There is also something cumbersome and time consuming about federal agencies referring complaints to local or state human-rights agencies first, instead of acting on them themselves.

At the same time, some people suggest that employees with complaints should be required to exhaust internal grievance procedures before any official agency acts on their charges. The problem here is that many employees, students and applicants cannot exhaust a minotia loaded internal grievance machinery established by a large corporation or institution. No well run system deliberately operates an apparatus to facilitate its own behavior change by one of its victims. In biological organisms this is condemned as a suicidal tendancy.

To whom does a victim of an Affirmative Action violation turn? To the procedure, delineated in the plan of the employer, as a first step.

Typically, in a well-run conceived Affirmative Action Plan, a person feeling put upon has access to counseling help in any skirmish with the employer. This is called Equal Employment Opportunity Counseling. In a well run employing organization, such counselors abound, although their titles vary. To the strongly committed such a job is an ulcer factory and sensible people soon manage to get themselves promoted or reclassified, or develop exquisite survival tactics.

Equal employment opportunity counseling begins when an employee comes to the counselor with a problem. Where walk-in counseling is possible, the problem may be fully discussed when the employee first contacts the counselor. In other cases, the employee may contact the

counselor and ask to talk about his problem at a particular time. The employee should be informed of his right to have a representative present at all counseling sessions, including the first one.

A single incident will generally be the immedicate cause for the employee to come to a counselor, but the problem frequently will be the result of many occurrences culminating in an incident which motivates the employee to seek a remedy for the situation. Although the cause of employee problems are myriad, the matters most frequently called to the attention of counselors include: Failure to be promoted or to be considered for promotion; failure to be selected for training; disciplinary action; or harassment by supervisors or others.

If the problem clearly does not involve an allegation of discrimination based on race, color, religion, sex, or national origin, the counselor directs the employee to proper channels for resolution of the problem. If, for example, an employee says that he was denied something because of nonmerit factors other than race, color, religion, sex, or national origin, the counselor informs the employee of his right to file a grievance under the agency grievance procedure (or negotiated grievance procedure), and advise him where he can do so.

If the problem clearly involves an allegation of discrimination based on race, color, religion, sex, or national origin, the counselor gets the details as the employee sees them, then tells the employee he/she will make appropriate inquiries and discuss the problem further at a later time. If the counselor questions whether the problem

is within the purview of the discrimination complaint process, the counselor may not deny the employee the initial interview. In such cases, after the employee has explained the problem, the counselor should "check" with the EEO officer before he begins making further inquiries, and before filing a complaint with a governmental agency.

Is Affirmative Action, potentially, a workable national effort? Indeed it is. The perplexing fact is that Affirmative Action can work. An employer, either institutional or commercial, is short-sighted to ignore, evade, or fight the establishment and implementation of a good and acceptable plan. Bear in mind, "good" and "acceptable" are not necessarily the same thing, or even companions. Few "acceptable" plans are automatically "good". An "acceptable" plan is one which satisfies officialdom. A "good" plan definitely benefits the employer. A good plan is in reality an effective and logical management activity that leads to a better and stronger work force and, for commercial organizations, profit.

Assistance in Affirmative Action program design is also surprisingly inexpensive and a bonafide business expense. Low cost training programs quickly orient key staff members to what is required, and help make the necessary paperwork and reporting routine relatively easy. Personnel practices that are compatable with a good plan inevitably lead to better production, better utilization of employee skills and training, improved public relations, and improved exploitation of the local labor market. Quite often the resistance of Affirmative Action, on the parfet of the employer is due to the first contact with a government official or with an ad-

vocate of Affirmative Action. These contacts often occur in an accusatory framework. Communicated directly or by implication is the message, "you are a bigot or a fool and you have deliberately not done the right thing by..." When this happens--and it happens very often, the myth rises from the swamp of racism, sexism, and stereotypic and prejudicial reaction--and the conflict is on.

So, shall we assign Affirmative Action to our dream list? It would be in such notable company as

Equal Education Opportunity

Integration

The Eradication of Narcotic Drug Addiction

Effective Alternatives to Detention

Welfare with Dignity

Full Employment

Open Marriage

Is Affirmative Action a myth, or a national charade in which few play their parts sincerely? Perhaps with so many concerned, yet with so many fewer committed, and so many fewer yet making an honest and effective action, "myth" is too respectable a designation. A charade, moved from parlor to conference room--charade may well be the better word.

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WHITE COLLAR MANAGEMENT
Man & Manager, Inc.
799 Broadway New York, N.Y. 10003

Advocative Professional Associations

American Association For Affirmative Action
National Office: Ball State University
Muncie, Indiana 47306

National Association & Human Rights Worker
William Jessup, President (1976)
P.O. Box 3674 Wilminster, North Carolina
28401

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CERTIFICATIONS ACCOMPANY EACH "PROPOSAL" FOR FEDERAL GRANTS OR CONTRACTS

THE PROPOSAL WRITER SAYS, IN EFFECT, THAT CERTAIN AFFIRMATIVE ACTION REQUIREMENTS ARE ALREADY ESTABLISHED.

TAKEN FROM A TYPICAL AND RECENT FEDERAL "REQUEST FOR PROPOSAL, TO WHICH A UNIVERSITY RESPONDED BY SUBMITTING A PROPOSAL.

Additional Representations and Certifications:

10. AFFIRMATIVE ACTION PROGRAM (EQUAL OPPORTUNITY) (SEPT. 1970)
(APPLICABLE TO CONTRACTS EXCEEDING $10,000)

The offeror represents that (1) he ( ) has developed and has on file ( ) has not developed and does not have on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) he ( ) has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor. (FPR TEMP. REG. 19)

11. MINORITY BUSINESS ENTERPRISE (JUNE 1975)

The offeror represents that he ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a "business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts. (FPR 1-1.1303)

12. CLEAN AIR AND WATER CERTIFICATION (AUG. 1975)

(Applicable if the offer exceeds $100,000, or the contracting officer has determined that orders under an indefinite quantity contract in any year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U. S. C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt).

The offeror certifies as follows:

(a) Any facility to be utilized in the performance of this proposed contract has ( ), has not ( ), been listed on the Environmental Protection Agency List of Violating Facilities.

(b) He will promptly notify the contracting officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.

(c) He will include substantially this certification, including this paragraph (c), in every nonexempt subcontract. (FPR 1-1.2302-1)

13. HANDICAPPED CERTIFICATION (JAN. 1976)

The offeror certifies with respect to the Employment of the Handicapped clause as follows:

1. He ( ) has, ( ) has not, previously been awarded a contract which included the clause. (If affirmative, execute 2).

2. The time specified for contract performance ( ) exceeded 90 days, ( ) did not exceed 90 days. (If more than 90 days, execute 3).

3. The amount of the contract was ( ) less than $500,000, ( ) more than $500,000, and he ( ) has, ( ) has not published his program for the employment of the handicapped. (If more than $500,000, execute 4).

REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

The Offeror represents and certifies as part of his offer that *(Check or complete all applicable boxes or blocks.)*

1. SMALL BUSINESS *(See par. 14 on SF 33–A.)*
He ☐ is, ☐ is not, a small business concern. If offeror is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. REGULAR DEALER—MANUFACTURER *(Applicable only to supply contracts exceeding $10,000.)*
He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

3. CONTINGENT FEE *(See par. 15 on SF 33–A.)*
(a) He ☐ has ☐ has not, employed or retained any company or person *(other than a full-time, bona fide employee working solely for the offeror)* to solicit or secure this contract, and (b) he ☐ has, ☐ has not, paid or agreed to pay any company or person *(other than a full-time bona fide employee working solely for the offeror)* any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. *(For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Subpart 1–1.5.)*

4. TYPE OF BUSINESS ORGANIZATION
He operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a corporation, incorporated under the laws of the State of _____

5. AFFILIATION AND IDENTIFYING DATA *(Applicable only to advertised solicitations.)*
Each offeror shall complete (a) and (b) if applicable, and (c) below.
(a) He ☐ is, ☐ is not, owned or controlled by a parent company. *(See par. 16 on SF 33–A.)*
(b) If the offeror is owned or controlled by a parent company, he shall enter in the blocks below the name and main office address of the parent company:

Name of Parent company and main office address _____

(include ZIP Code) _____

(c) Employer's identification number *(See par. 17 on SF 33–A.)* _____ _____
(Offeror's E.I. No.) *(Parent Company's E.I. No.)*

6. EQUAL OPPORTUNITY
He ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in section 201 of Executive Order No. 11114; that he ☐ has, ☐ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. *(The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)*

7. BUY AMERICAN CERTIFICATE
The offeror hereby certifies that each end product, except the end products listed below, is a domestic source end product (as defined in the *clause* entitled "Buy American Act"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

EXCLUDED END PRODUCTS	COUNTRY OF ORIGIN

8. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION *(See par. 18 on SF 33–A.)*
(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and
(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.
(b) Each person signing this offer certifies that:
(1) He is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above, or
(2) (i) He is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above.

9. CERTIFICATION OF NONSEGREGATED FACILITIES
(Applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.)
By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). *NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.*

ACKNOWLEDGMENT OF AMENDMENTS	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
The offeror acknowledges receipt of amendments to the Solicitation for Offers and related documents numbered and dated as follows:				

NOTE.—Offers must set forth full, accurate, and complete information as required by this Solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

GUIDELINE

APPLICATION: GENERAL

AFFIRMATIVE ACTION PROCEDURES FOR PROCESSING COMPLAINTS OF DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

1. EMPLOYEE contacts EEO COUNSELOR within 30 calendar days of alleged discriminatory action. COUNSELOR has 21 calendar days to attempt informal resolution.

   If final counseling interview is not completed in 21 days, COUNSELOR must on 21st day give written notice of right to file complaint any time up to 15 calendar days after final interview.

2. If informal resolution fails, EMPLOYEE may file formal complaint with DIRECTOR OF EEO, AGENCY HEAD, INSTALLATION HEAD, EEO OFFICER, FWPC within 15 calendar days of final interview with COUNSELOR.

3. EEO OFFICER advises DIRECTOR OF EEO, who assigns INVESTIGATOR from jurisdiction of agency other than that in which complaint arose.

4. Investigation conducted; COMPLAINANT given copy of investigative file. EEO OFFICER provides opportunity for informal adjustment.

5. If adjustment not made, EEO OFFICER notifies COMLAINANT in writing (1) proposed disposition, (2) right to hearing and decision by AGENCY HEAD, and (3) of right to decision by AGENCY HEAD without a hearing.

6. If COMPLAINANT does not reply within 15 calendar days, EEO OFFICER may adopt proposed disposition as decision of the agency, providing he has been delegated this authority. Otherwise, complaint is forwarded to AGENCY HEAD (or his designee) for agency decision. Upon receipt of decision, EMPLOYEE may appeal this decision or any final decision within 15 days to CSC or may file a civil action in an appropriate U.S. District Court within 30 days.

7. If COMPLAINANT asks for hearing, agency requests CSC to assign complaints EXAMINER, who must be from agency other than that in which complaint arose.

8. COMPLAINTS EXAMINER reviews file; remands complaint to agency if further investigation necessary; schedules and conducts hearing.

9. Hearing recorded and transcribed verbatim. COMPLAINTS EXAMINER makes findings, analysis, and recommended decision; forwards these and complaint file to the AGENCY HEAD (or his designee).

10. HEAD OF AGENCY (or his designee) makes agency decision, based on file, giving comlainant copy of COMPLAINTS EXAMINER's report. Must give specific reasons for rejection or modification of (COMPLAINTS EXAMINER's recommended decision in detail).

WJR:75

11. COMPLAINANT has right to appeal to CSC's BOARD OF APPEALS AND REVIEW within 15 calendar days.

NOTE: I. COMPLAINANT has right to file civil action in an appropriate U.S. District Court:

a. within 30 calendar days of his receipt of notice of final agency action on complaint

b. after 180 calendar days from date of filing a complaint with agency if there has been no decision

c. within 30 calendar days of his receipt of notice of final action taken by CSC on complaint, or

d. after 180 calendar days from date of filing an appeal with CSC if no CSC decision

Filing of a civil action does not end agency processing of a complaint or CSC decision.

II. The agency shall furnish CSC monthly reports on all complaints pending within the agency. If an agency has not issued a decision or requested CSC to supply a complaints examiner within 75 calendar days of the date a complaint was filed, CSC may require special action or assume responsibility for the complaint.

WJR:75

NAME OF CASE	DESCRIPTION OF CASE
Cummins V. Parker Seal Company	The issue here is both the constitutionality under the First Amendment and the scope of the Civil Rights Act of 1964 provisions that forbid employers to discharge an individual because of his religion and require employers to make reasonable accommodation to the religious needs of employees where this can be done without undue hardship in the conduct of the employer's business.
Miranda V. Local 208, Amalgamated Clothing Workers	Class action by Puerto Rican workers against union and employers charging discrimination in placement, seniority, promotion and other employment practices against Puerto Ricans and seeking damages and affirmative action.
Hollander v. Sears, Roebuck & Co.	Plaintiff, a pre-law student at Wesleyan, was denied an interview for employment in Sears Summer Internship program for minority college students in 1974 soley because he is white. He seeks compensatory and punitive damages, as well as a court order enjoining such discrimination.

NATURE OF AJC INVOLVEMENT	STATUS
A brief amicus will be filed by AJC in support of affirmance of the decision of the U.S. Court of Appeals for the Sixth Circuit in favor of the employee, probably together with one or more other Jewish groups. The argument will stress the overriding importance of the free exercise of religion in our society.	A U.S. District Court concluded that the employer made a reasonable accommodation to plaintiff's religious needs and that no further accommodation could made without creating an undue hardship on its busines It dismissed the complaint, plaintiff appealed, and the Circuit Court of Appeals reversed (2-1). On March 1, the U.S. Supreme Court granted certiorari.
Effort to bring counsel for plaintiffs (Puerto Rican Defense Fund) and union representatives together to attempt to work out a settlement as the basis for a Consent Decree, insofar as the union is concerned.	Pending in U.S. District Court in New Jersey. Discovery proceedings are still in progress.
Everett Fink of the Hartford Chapter has consulted with plaintiff on several occasions and has furnished guidance to him in pursuing his action on his own, as he wishes to do. AJC's Legal Director has conferred with him too.	Connecticut Human Rights Commission dismissed plaintiff's complaint. His appeal to Court of Common Pleas was abated because it was filed too late. He then brought suit in U.S. District Court denied Sears's motion to dismiss the case, ruling that plaintiff may bring his actio under the Civil Rights Act of 1866 since the Act ("all persons shall have the same righ ..to make an enforce contract ..") applies to discriminatio against whites too. Further proceedings are pending.

COMMENT→ Among the basic requirements for being what the U. S. Dept. of Labor recognizes as an executive, one must:

- ► Earn the minimum salary set by the Dept.;
- ► Regularly direct the work of two or more other employees;
- ► Be able to hire and fire other workers;
- ► Regularly exercise discretionary power; and
- ► Devote no more than 20% of his or her hours of work to non-supervisory work.

THE AUTHOR

Wendell J. Roye, is a Human Relations and Intergroup Relations specialist with twenty-five years as a professional in the field. He is a past president of The National Association of Human Relations Workers, and has had a distinguished career as practical Human Relations at many levels, street-level community organization work, university graduate teaching, and university, industrial, and commercial corporation consulting in Affirmative Actions. He is an advocate for social change in the interests of minorities as well as a close observer of the American racial scene. Currently, as President of W.J. Roye, Inc., he teaches, trains and consults for a wide variety of educational and industrial clients.

He has taught graduate courses in Human Relations for Teachers college, Columbia University and for the University of Oklahoma. While doing advance study at Teachers College, he was Assistant Director of the National Center for Research and Information (NCRIEEO), a program designed to help school systems change and desegregate. His collaboration, with Dr. Rhoda Goldstein, on Interracial Bonds, a Human Relations Reader, is soon to be published.